



The State Bar of California

OPEN SESSION

AGENDA ITEM III.A.

APRIL 2024

COMMITTEE OF BAR EXAMINERS

DATE: April 19, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Program Director, Office of Admissions
Cody Hounanian, Program Director, Office of Admissions
Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

EXECUTIVE SUMMARY

At the March 2024 Committee of Bar Examiners meeting, the committee discussed a proposal for the State Bar to develop bar exam questions with a new vendor, enabling the adoption of alternative, cost-effective exam administration approaches beginning with the February 2025 administration. Informed by the committee's March discussion, staff worked with committee liaisons to explore the available options. Staff also sought feedback from various stakeholders, law schools, and the public. This item summarizes the feedback received and the State Bar's response, presents additional details regarding projected cost savings and logistics, and seeks the committee's recommendation to the Board of Trustees on a proposed course of action.

BACKGROUND

The Admissions Fund faces insolvency in 2026. The Office of Finance's final 2024 budget forecasts Admissions Fund deficit spending of \$3.8 million; the fund is projected to end 2024 with just \$3.3 million of reserves.

The significant structural deficit is primarily attributed to exam-related expenses, notably escalating testing facility and proctor costs. If the State Bar does not adopt changes to bar exam administration, it may be required to further increase fees, reduce the number of exam locations and proctors, and pursue other exam-related cost-saving measures; such actions would negatively impact applicants and could affect exam security.

To prudently manage the budget, staff have explored the prospect of transitioning to an alternative, cost-effective exam administration approach such as a fully remote online exam, utilizing small vendor-owned test centers, or a combination of the two beginning with the February 2025 administration. Staff estimates that adopting one of these alternatives would yield savings between \$3 million and \$4.3 million annually beginning in 2025 — enough to largely or fully eliminate the existing structural deficit.

Before the State Bar can pursue the exam administration approaches above, it must retain a new vendor to develop multiple-choice questions for the bar exam. Currently, the multiple-choice component of the exam — referred to as the Multistate Bar Examination (MBE) — is supplied by the National Conference of Bar Examiners (NCBE) which prohibits the MBE from being administered remotely or at vendor-owned test centers. The MBE will be phased out in 2028, meaning the State Bar will be required to replace the multiple-choice questions regardless of this current proposal. Additionally, recommendations from the Blue Ribbon Commission on the Future of the Exam, awaiting Supreme Court approval, call for replacing the MBE with a California-specific exam necessitating a similar change. Here staff propose to expedite the transition to a new vendor to achieve much-needed cost savings.

In January 2024, the State Bar issued a Request for Information (RFI), seeking proposals from potential vendors capable of developing multiple-choice questions equivalent to the MBE. Staff also requested information about the development of essays and performance tests to identify additional cost-saving opportunities.

No alteration of the exam itself is being proposed. The only proposal on the table is to change the vendor used for exam development to allow for alternative exam administration methods. The format and content will not change, and therefore no substantial modification of the training or preparation for passage of the examination will be necessary such that two years' notice of the change would be required.^{1,2}

At the March 2024 committee meeting, staff outlined a timeline for collecting stakeholder feedback throughout March and April.

On April 3 and 4, 2024, staff held discussions with over two dozen deans and faculty members representing California-accredited and registered, unaccredited law schools and over sixty representing American Bar Association-approved law schools as part of the stakeholder feedback solicitation effort. Dr. Chad Buckendahl was present to describe the question development processes, provide an overview of the psychometric validation process that would be employed to ensure exam and score reliability, and address inquiries.

Following these sessions on April 12, deans representing California-accredited law schools submitted a letter expressing concerns with the proposal to develop questions with a new vendor. The letter has been provided to the committee as a public comment and included here in Attachment A.

¹ CA Rules of Court, rule 9.6.

² CA Bus & Prof Code § 6046.6.

Staff will host a public forum on April 16 to receive further comments and input from stakeholders regarding the proposal to develop questions with a new vendor. As of this writing, the forum has yet to take place. Staff will provide an oral update to the committee at its upcoming meeting. In addition to feedback received from law schools, several members of the public have already provided written comments which have been shared with the committee and included here in Attachment B.

DISCUSSION

STAKEHOLDER FEEDBACK

Staff have carefully considered concerns raised by stakeholders and address them, by topic area, below in Table 1. The responses are informed by consultation with Dr. Buckendahl; more information about the psychometric validation process to be used for this initiative is included in Attachment C.

Staff believe that most of the concerns have or can be addressed by providing more information about the process, through the psychometric validation process to be employed, and the preparation materials to be provided to law schools and applicants. Some uncertainties are inevitable due to the change to a new question development vendor.

It is important to note that regardless of when administration of new questions occurs or the pre-testing efforts made, the same situation and methodologies in response will arise. The State Bar is committed to upholding industry best practices for question development and validation which, in the case of developing new questions, entails gathering essential statistical data during the initial administration of those questions and evaluating it afterward. Moreover, to ensure the new questions meet expectations prior to administration, a panel of recently admitted attorneys, supervisors of recently admitted attorneys, and law school professors will assess the questions in development as is best practice.

Table 1. Summary of Law School Feedback and Response by Staff and Psychometrician

Feedback	Response
Concerns about the timeline and a lack of pre-testing	<p>While the timeline appears aggressive, staff is confident that the timeframe is achievable given that the vendor under consideration is an existing test-prep provider with experience developing MBE-like questions that will be replicating existing MBE questions.</p> <p>In addition, the State Bar has considerable experience developing and validating multiple-choice questions through the First-Year Law Students' Exam and is aware of the effort</p>

	<p>and expectations associated with gathering validity evidence prior to administering questions.</p> <p>Regarding the process to be employed, a designated panel of recently admitted attorneys, supervisors, and law school faculty, will evaluate the questions produced by the vendor to ensure alignment of questions with MBE content areas, adherence to writing style, and suitability for assessing minimum competency. After the initial administration, questions will undergo analysis using Item Response Theory to establish new baseline data; the same methodology that NCBE uses to ensure consistency.</p> <p>Some of the new questions will be field-tested via the California Bar Exam Experiment in October 2024.³</p>
Uncertainty regarding how well scores on existing practice exams will predict performance on new questions	<p>The vendor under consideration is an existing test-prep company with expertise in developing practice materials.</p> <p>While information about various test-prep companies' specific methodologies is not available, the new multiple-choice questions will be designed to measure the same content areas using the same item types as the MBE; preparation should remain unchanged.</p> <p>There will always be variations between performance on practice exams developed by test-prep companies and performance on the actual exam administered.</p>
Need for new preparation materials and guidance for law schools and applicants	<p>While new preparation materials aren't necessary, since the proposal is to simply replace the current MBE questions, the State Bar understands that any change to the bar exam may create worry for students and law schools. The State Bar will provide a content map, study guide, faculty guide, and sample questions to alleviate concerns.</p> <p>The proposal is deliberately designed to ensure there is no modification in preparation necessary. The proposal simply replaces MBE questions with equivalent ones while</p>

³ The California Bar Exam Experiment is a mock exam study that aims to understand the impact of various exam modalities and designs. The mock exams are administered in a way that emulate the bar exam as closely as possible. A pilot California Bar Exam Experiment administered in October 2023 utilized questions developed by the same vendor currently under consideration for this proposal. A full, larger-scale experiment will be conducted in October 2024.

	maintaining consistency in domain measurement, item types, and number of questions.
Questions about the replication of MBE questions that no longer meet best practices and suggestions for improvements	<p>Any contract with a new vendor would require the vendor to replicate MBE multiple-choice questions currently in use.</p> <p>Working with a new vendor does allow for future improvements that align multiple-choice questions with current best practices.</p>
Concerns about a lack of a passing score study before administration and uncertainty about the equating and scaling process	<p>In any scenario involving new exam content historical data for equating and scaling wouldn't be available. This remains true regardless of whether a new vendor is hired, the timeframe before new questions are administered, or if pre-testing or other efforts were conducted beforehand.</p> <p>A final “raw” passing score can only be determined after data is collected on a motivated, representative sample of applicants; field test data generally underestimate item performance.</p> <p>To establish a “raw” passing score, the State Bar plans to employ the same validation approach utilized by the NCBE, namely, Item Response Theory.</p> <p>Only questions meeting the criteria for inclusion will be used for scoring. A passing score study after the initial administration recommends a baseline passing score, facilitating equating for future exams. The passing score is not the exam cut score set by the California Supreme Court.</p>

While the State Bar is confident in the effectiveness of proposed psychometric validation processes and other measures to ensure question validity, exam score reliability, and consistent exam preparation, it recognizes that additional steps may be needed to enhance confidence in the proposed changes. In response to the feedback received, as noted in the table above, staff worked with Dr. Buckendahl to develop a plan to integrate a selection of the newly developed multiple-choice questions into the October 2024 California Bar Exam Experiment. This will provide a way to pre-test items ahead of the February 2025 administration. Additionally, some California-accredited law schools voiced concerns about the proposal's potential impact on their compliance with State Bar rules and guidelines related to their bar pass rates. In response to this concern, staff recommends that the committee explore temporary measures that would alleviate any adverse effects on law school compliance during the transition to new exam questions, such as an “MPR holiday” where the State Bar would track bar pass rates at California-accredited law schools in 2025, but the results would not be folded into the five-year average used for compliance purposes.

EXAM QUESTION DEVELOPMENT WITH NEW VENDOR

Staff, in close consultation with Dr. Buckendahl and the committee liaisons, have held extensive discussions over the past several weeks with a respondent to the RFI that has extensive experience in crafting MBE-like questions for bar exam preparation materials. This vendor's proposals meet the State Bar's requirements for question validity, reliability, and security, and have confirmed that it can produce the requested materials in time for the February 2025 administration target. If retained by the State Bar, the vendor would exit the test-prep market in California and develop the requisite number of multiple-choice bar exam questions equivalent to the MBE. The vendor may develop essays and performance tests as well. The State Bar would retain intellectual property rights, and the vendor would produce a no-cost study guide for all bar exam applicants.

At this writing, the vendor's exam development proposals range from \$1.15 million to \$1.375 million annually. Additionally, the vendor's proposal includes a no-cost study guide, addressing stakeholder requests for sample questions and other materials. Staff are currently evaluating the proposals and aim to finalize an agreement before the May Board of Trustees meeting.

As a contingency plan, the committee should be aware that the State Bar can request MBE exam materials from the NCBE up to six weeks before the administration date.

EXAM ADMINISTRATION APPROACHES

The development of new multiple-choice questions is aimed at offering the State Bar flexibility to pursue alternative, cost-effective bar exam administration approaches. Staff explored three approaches, described below, including fully remote, vendor-owned test centers, and a hybrid approach combining the two. Each would produce significant savings compared to the current in-person administration at large venues — estimated to be between \$3 million and \$4.3 million in savings annually.

While the impetus of this proposal is budget-driven, applicants will also benefit from the change to a new administration approach. Each option would result in savings for applicants as well including reduced travel and lodging expenses. These options also align with test taker preference. A survey of 1,589 test takers who sat for the February 2024 bar exam found that 75 percent would prefer to take the exam on a computer remotely or in a smaller test setting.

Fully Remote

Staff have received proposals from vendors capable of administering a fully remote bar exam, possessing the necessary infrastructure to accommodate the significant volume of applicants. All the vendors under consideration offer live remote proctoring, effectively addressing various exam security and integrity concerns that emerged during the pandemic-era remote exams. A fully remote administration approach would alleviate costly and labor-intensive tasks such as securing and managing large exam facilities and the recruitment and compensation of proctors.

Staff continues to assess how to provide an equivalent exam experience for applicants with testing accommodations in a fully remote environment.

Vendor-Owned Test Centers

A vendor-owned test center approach offers many of the cost savings and operational benefits that a fully remote administration would as well as additional benefits such as on-site proctors who can promptly address technology issues and a standardized testing environment, particularly beneficial for those lacking suitable home environments. This approach would also help mitigate or eliminate issues related to testing accommodations in a fully remote administration. One concern has been vendors' ability to meet the high volume of applicants that sit for each bar exam administration. Staff is actively working with test center vendors to develop a custom solution.

Hybrid: Remote and Vendor-Owned Test Center

Combining remote administration with the opportunity for applicants to choose to test at a vendor-owned test center presents a compelling strategy for achieving substantial cost savings while maximizing benefits and tailoring the exam experience to individual applicant needs. Vendors under consideration have, without developing a custom solution, the capacity to serve all applicants via a hybrid remote/test center approach. Staff continues to assess how to provide an equivalent exam experience for applicants with testing accommodations in a hybrid environment.

Contingency Planning: "As-Is" In-Person Administration

Staff is actively working to reserve facilities for February 2025 as a contingency plan.

FISCAL/PERSONNEL IMPACT

Staff estimates the "as-is" cost of bar exam question development and administration in 2025 will total \$8.4 million. Table 2 shows the estimated annual cost savings that will be achieved if the State Bar contracts with a new question development vendor and adopts the various alternative exam administration approaches beginning with the February 2025 administration.

Table 2. Annual Cost Savings from Alternative Bar Exam Administration Approaches

Approach	Annual Savings
Fully remote	\$4.3 million
Vendor-owned test center	\$3 million
Hybrid	\$4 million

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

Staff recommend that the State Bar retain a new vendor to develop exam questions which would allow for the adoption of cost-effective bar exam administration approaches.

Should the Committee of Bar Examiners concur, passage of the following motion is recommended:

MOVE, that the Committee of Bar Examiners recommend to the Board of Trustees that the State Bar retain a new vendor to develop bar exam questions.

ATTACHMENT(S) LIST

- A.** Letter from California-Accredited Law Schools
- B.** Written Public Comment Bar Exam Question Development with New Vendor
- C.** Presentation from State Bar Psychometrician Chad Buckendahl on Test Development and Validation Process